IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
Family Court Appeal St.No.7709 of 2006

Chandraprakash U.Bhansali,)
Hindu, aged 49 years,)
Occupation - Business,)
Residing at Panchsheela Building,)
Thakurdwar Road, Mumbai - 400 002.).. Appellant

Vs.

1. Jignesh Jayendra Patel,)
Aged 27 years, residing at)
133/B, 3rd Floor,)
Nathalal Bhavan, V.P.Road,)
Mumbai - 400 004.)

2. Poonam D/o.Chandraprakash)
Bhansali, Hindu,)
Aged 24 years, Occ : NIL,)
Residing at C/o.Chandraprakash)
U.Bhansali, Panchsheela Bldg.,)
Thakurdwar Road,)
Mumbai - 400 002.)

3. Smt.Jasmeen Jignesh Patel,)
wife of Respondent No.1,)
133/B, 3rd Floor,)
Nathalal Bhavan, V.P.Road,)
Mumbai - 400 002.).. Respondents.

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Shri U.D.Bhatt for the appellant.

Shri H.H.Trivedi for the respondent No.1.

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CORAM: R.M.S.KHANDEPARKAR
&
SMT.ROSHAN DALVI, JJ

DATED: 3RD MAY, 2006.

ORAL ORDER: (Per R.M.S.Khandeparkar, J)

1. By consent, taken up on board on request.

2. This is an appeal against the judgment and order dated 10th February, 2006 passed by the Family Court in the proceedings Lodging No.672 of 2006. The appellant herein had filed the said proceedings for declaration of nullity of the marriage of his daughter-the respondent No.2 herein, with the respondent No.1 on the ground that the marriage between the respondent No.1 and the respondent No.3 herein still subsists, and therefore, the marriage between the respondent Nos.1 and 2 is required to be dissolved.

3. Considering the provisions of Section 7 of the Family Court Act, 1984, an office objection was raised by the office of the Family Court regarding competency of the petitioner to file a petition for dissolution of the marriage between the respondent Nos.1 and 2. Upon hearing the appellant, the Family Court, after taking into consideration the provisions of Section 11 of the Hindu Marriage Act, 1955, read with Section 7 of the Family Court Act, 1984, held that the appellant is not entitled to challenge the marriage between the respondent Nos.1 and 2, and therefore, rejected the petition. Being aggrieved, the present appeal has

been filed.

4. Referring to the Section 7(1) of the Family Court Act and the explanation clauses (a) and (b) thereto, the learned advocate appearing for the appellant submitted that as far as the suits in the nature of dissolution of marriages by the parties to the marriage are concerned, the same are covered by clause (a) to the explanation thereof, whereas, the suits by strangers to the marriage are covered by the clause (b) to the said explanation, and considering the same, merely because Section 11 of the Hindu Marriage Act empowers dissolution at the instance of the parties to the marriage, that cannot be a sufficient ground to reject the petition filed by the appellant, and therefore, the impugned order should be set aside and the matter be remanded to the Family Court by restoring the petition to be dealt with on merits.

5. The learned advocate appearing for the respondent No.1, on the other hand, submits that Section 11 of the Hindu Marriage Act clearly debars the proceedings at the instance of the appellant, the father of the girl.

6. Section 7 of the Family Courts Act relates to the jurisdiction of the Family Court to entertain the proceedings before such Courts. The clause (a) of the Explanation to the Sub-section (1) thereof provides that the Family Court shall have and exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation Clause to the said sub-section. The clause (b) of the said Explanation provides that the Family Court shall be deemed, for the purposes of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends. The expression "suits and proceedings of the nature referred to in the explanation" appearing in the clause (a) to Section 7(1) of the Family Court Act clearly discloses that the explanation clause to the said Section describes the nature of the proceedings which can be filed and entertained by the Family Courts. Neither Section 7(1) nor its explanation clause relates to the rights of the parties to initiate proceedings or to seek any declaration about their rights or the rights of other parties.

7. It is well settled law that the rights arising out of marital relationship are governed by the personal law of the concerned parties. Once it is not in dispute that the parties are Hindus, their rights are to be governed by Hindu Law. In relation to the Hindu marriages, their rights are essentially to be governed by the Hindu Marriage Act, 1955 and Section 11 of the Hindu Marriage Act clearly provides that any marriage solemnized after the commencement of the said Act shall be null and void and may, on a petition presented by either of the parties thereto, against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5 of the said Act. Obviously, dissolution of the marriage on the ground that it is null and void has to be initiated by one of the parties to the marriage and the same should be against the other party to the marriage. In other words, it is the proceedings between the spouses, and the strangers have no right to initiate any such proceedings. Indeed, the law in this regard is well settled.

8. Undisputedly, the declaration sought for in the matter was for dissolution of the marriage between

the respondent Nos.1 and 2 by the appellant, who is father of the respondent No.2. Being so, the clause (b) to the Explanation to Section 7(1) of the Family Courts Act cannot be of any help to the appellant as the said clause merely relates to the description of the nature of the proceedings which can be entertained by the Family Court and it nowhere relates to the rights of the parties to initiate the proceedings in the Family Court.

9. For the reasons stated above, no fault can be found with the impugned judgment and order passed by the Family Court which has rejected the petition filed by the person stranger to the marriage.

10. For the reasons stated above, therefore, there is no substance in the appeal and the same is liable to be dismissed and is hereby dismissed.

(R.M.S.KHANDEPARKAR, J)

(SMT.ROSHAN DALVI, J)